

AMENDED IN ASSEMBLY MAY 2, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1824

Introduced by Assembly Member Hagman

February 21, 2012

An act to amend ~~Sections 1166, 1196, Section 1305, and 1306~~ of the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 1824, as amended, Hagman. Bail.

Existing law specifies the procedures for the forfeiture and exoneration of a bail bond, including requiring a court to direct the order of forfeiture to be vacated and the bond exonerated if the defendant appears in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of a specified notice, if required. *Under existing law, in all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained by the bail agent in the presence of local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under the penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the defendant's location, the court is required to vacate the forfeiture and exonerate the bond.*

This bill would require exoneration of the bond if the prosecuting agency elects not to seek extradition when the defendant is temporarily detained by the bail agent in a location beyond the jurisdiction of the state but in the United States or a foreign state that has a treaty of

extradition with the United States. The bill would require specified proof to be presented when the court is vacating a bond in these instances, including the local law enforcement officer's information and other information showing proof of positive identification of the defendant. The bill would also allow for an extension of the 180-day period described above, for an additional period up to 180 days, if the prosecuting agency does not make a decision within the original 180-day period and would authorize the court to require that the bail agent or surety pay the reasonable costs of extradition, in an amount not to exceed the bond, as a condition of granting the extension. The bill would require the moving party to give the prosecuting agency written notice at least 10 court days before a hearing on specified motions related to a bond, including motions to exonerate the bond based on a decision by the prosecuting agency not to extradite.

~~This bill would require the bond to be exonerated if the defendant appears in court, is surrendered to custody by the bail, or is arrested in the underlying case within 180 days after forfeiture and would allow 30 days from the mailing of the notice of entry of judgment to file a motion for exoneration if the defendant is surrendered by the bail outside the county where the court is located.~~

~~Under existing law, where a defendant is detained beyond the jurisdiction of the court and the prosecuting agency elects not to seek extradition, the court is required to vacate the forfeiture and exonerate the bond.~~

~~This bill would require exoneration of the bond if the prosecution elects not to seek extradition or transfer from a jurisdiction outside the county. The bill would also require the court, if the prosecuting agency elects to extradite the defendant, to toll the 180-day period for the time required by the prosecuting agency to obtain an extradition warrant for the defendant plus a reasonable time for the service of the warrant.~~

~~Under existing law, if a general verdict is rendered against the defendant or a special verdict is given, the defendant is required to be remanded or, if on bail, committed to the county to await judgment.~~

~~The bill would require remand or commitment to the county after a defendant enters a plea of guilty or is found guilty after entering a plea of nolo contendere.~~

~~Existing law requires county agencies to enter each bench warrant issued on a private surety-bonded felony case into the national warrant system. If the county agency fails to do this and that failure prevents the surety or bond agent from surrendering the fugitive into custody,~~

~~prevents the fugitive from being arrested or taken into custody, or results in the fugitive's subsequent release from custody, then the bail is exonerated.~~

~~This bill would require the warrants in the national warrant system to be entered as fully extraditable warrants. By increasing the duties of county agencies, this bill would impose a state-mandated local program.~~

~~Existing law requires the district attorney or county counsel, when a bond is forfeited after the 180-day period, to take specified actions; including demanding immediate payment of the judgment within 30 days after summary judgment becomes final.~~

~~This bill would also make these requirements applicable to other applicable prosecuting agencies and would authorize the named agencies to enter into a court-approved resolution of the judgment of forfeiture if the motion to vacate for forfeiture or judgment is made.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no.
State-mandated local program: yes-no.~~

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1166 of the Penal Code is amended to~~
2 ~~read:~~
3 ~~1166. If a general verdict is rendered against the defendant, a~~
4 ~~special verdict is given, the defendant enters a plea of guilty, or~~
5 ~~the defendant is found guilty after entering a plea of nolo contendere~~
6 ~~he or she shall be remanded, if in custody, or, if on bail, he or she~~
7 ~~shall be committed to the proper officer of the county to await the~~
8 ~~judgment of the court upon the verdict, unless, upon considering~~
9 ~~the protection of the public, the seriousness of the offense charged~~
10 ~~and proven, the previous criminal record of the defendant, the~~
11 ~~probability of the defendant failing to appear for the judgment of~~
12 ~~the court upon the verdict, and public safety, the court concludes~~
13 ~~the evidence supports its decision to allow the defendant to remain~~
14 ~~out on bail. When committed, his or her bail shall be exonerated~~

1 or, if money is deposited instead of bail, it shall be refunded to the
2 defendant or to the person or persons found by the court to have
3 deposited the money on behalf of the defendant.

4 SEC. 2. Section 1196 of the Penal Code is amended to read:

5 1196. (a) The clerk shall, at any time after the order, issue a
6 bench warrant into one or more counties.

7 (b) The clerk shall require the appropriate agency to enter each
8 bench warrant issued on a private surety-bonded felony case into
9 the national warrant system (National Crime Information Center
10 (NCIC)). If the appropriate agency fails to enter the bench warrant
11 into the national warrant system (NCIC) as a fully extraditable
12 warrant, and the court finds that this failure prevented the surety
13 or bond agent from surrendering the fugitive into custody,
14 prevented the fugitive from being arrested or taken into custody,
15 or resulted in the fugitive's subsequent release from custody, the
16 court having jurisdiction over the bail shall, upon petition, set aside
17 the forfeiture of the bond and declare all liability on the bail bond
18 to be exonerated.

19 SEC. 3.

20 SECTION 1. Section 1305 of the Penal Code is amended to
21 read:

22 1305. (a) A court shall in open court declare forfeited the
23 undertaking of bail or the money or property deposited as bail if,
24 without sufficient excuse, a defendant fails to appear for any of
25 the following:

- 26 (1) Arraignment.
- 27 (2) Trial.
- 28 (3) Judgment.
- 29 (4) Any other occasion prior to the pronouncement of judgment
30 if the defendant's presence in court is lawfully required.
- 31 (5) To surrender himself or herself in execution of the judgment
32 after appeal.

33 However, the court shall not have jurisdiction to declare a
34 forfeiture and the bail shall be released of all obligations under the
35 bond if the case is dismissed or if no complaint is filed within 15
36 days from the date of arraignment.

37 (b) (1) If the amount of the bond or money or property deposited
38 exceeds four hundred dollars (\$400), the clerk of the court shall,
39 within 30 days of the forfeiture, mail notice of the forfeiture to the
40 surety or the depositor of money posted instead of bail. At the

1 same time, the court shall mail a copy of the forfeiture notice to
2 the bail agent whose name appears on the bond. The clerk shall
3 also execute a certificate of mailing of the forfeiture notice and
4 shall place the certificate in the court's file. If the notice of
5 forfeiture is required to be mailed pursuant to this section, the
6 180-day period provided for in this section shall be extended by
7 a period of five days to allow for the mailing.

8 (2) If the surety is an authorized corporate surety, and if the
9 bond plainly displays the mailing address of the corporate surety
10 and the bail agent, then notice of the forfeiture shall be mailed to
11 the surety at that address and to the bail agent, and mailing alone
12 to the surety or the bail agent shall not constitute compliance with
13 this section.

14 (3) The surety or depositor shall be released of all obligations
15 under the bond if any of the following conditions apply:

16 (A) The clerk fails to mail the notice of forfeiture in accordance
17 with this section within 30 days after the entry of the forfeiture.

18 (B) The clerk fails to mail the notice of forfeiture to the surety
19 at the address printed on the bond.

20 (C) The clerk fails to mail a copy of the notice of forfeiture to
21 the bail agent at the address shown on the bond.

22 (c) (1) ~~If, within the county where the case is located, the~~
23 ~~defendant appears in court, is surrendered to custody by the bail,~~
24 ~~or is arrested in the underlying case within 180 days of the date of~~
25 ~~forfeiture the defendant appears voluntarily or is in custody after~~
26 ~~surrender or arrest in court within 180 days of the date of forfeiture~~
27 ~~or within 180 days of the date of mailing of the notice if the notice~~
28 ~~is required under subdivision (b),~~ the court shall, on its own motion
29 at the time the defendant first appears in court on the case in which
30 the forfeiture was entered, direct the order of forfeiture to be
31 vacated and the bond exonerated. If the court fails to so act on its
32 own motion, then the surety's or depositor's obligations under the
33 bond shall be immediately vacated and the bond exonerated. An
34 order vacating the forfeiture and exonerating the bond may be
35 made on terms that are just and do not exceed the terms imposed
36 in similar situations with respect to other forms of pretrial release.

37 (2) If, within the county where the case is located, the defendant
38 is surrendered to custody by the bail or is arrested in the underlying
39 case within the 180-day period, and is subsequently released from
40 custody prior to an appearance in court, the court shall, on its own

1 motion, direct the order of forfeiture to be vacated and the bond
2 exonerated. If the court fails to so act on its own motion, then the
3 surety's or depositor's obligations under the bond shall be
4 immediately vacated and the bond exonerated. An order vacating
5 the forfeiture and exonerating the bond may be made on terms that
6 are just and do not exceed the terms imposed in similar situations
7 with respect to other forms of pretrial release.

8 (3) If, outside the county where the case is located, ~~either foreign~~
9 ~~or domestic~~, the defendant is surrendered to custody by the bail
10 or is arrested in the underlying case within the 180-day period, the
11 court shall vacate the forfeiture and exonerate the bail.
12 ~~Notwithstanding subdivision (i), a motion for exoneration brought~~
13 ~~under this paragraph may be filed within 30 days of the mailing~~
14 ~~of the notice of entry of judgment pursuant to Section 1306.~~

15 (4) In lieu of exonerating the bond, the court may order the bail
16 reinstated and the defendant released on the same bond if both of
17 the following conditions are met:

18 (A) The bail is given prior notice of the reinstatement.

19 (B) The bail has not surrendered the defendant.

20 (d) In the case of a permanent disability, the court shall direct
21 the order of forfeiture to be vacated and the bail or money or
22 property deposited as bail exonerated if, within 180 days of the
23 date of forfeiture or within 180 days of the date of mailing of the
24 notice if notice is required under subdivision (b), it is made
25 apparent to the satisfaction of the court that both of the following
26 conditions are met:

27 (1) The defendant is deceased or otherwise permanently unable
28 to appear in the court due to illness, insanity, or detention by
29 military or civil authorities.

30 (2) The absence of the defendant is without the connivance of
31 the bail.

32 (e) In the case of a temporary disability, the court shall order
33 the tolling of the 180-day period provided in this section during
34 the period of temporary disability, provided that it appears to the
35 satisfaction of the court that the following conditions are met:

36 (1) The defendant is temporarily disabled by reason of illness,
37 insanity, or detention by military or civil authorities.

38 (2) Based upon the temporary disability, the defendant is unable
39 to appear in court during the remainder of the 180-day period.

1 (3) The absence of the defendant is without the connivance of
2 the bail.

3 The period of the tolling shall be extended for a reasonable period
4 of time, at the discretion of the court, after the cessation of the
5 disability to allow for the return of the defendant to the jurisdiction
6 of the court.

7 (f) In all cases where a defendant is in custody ~~outside the county~~
8 ~~where the case is located~~ *beyond the jurisdiction of the court that*
9 *ordered the bail forfeited*, and the prosecuting agency elects not
10 to seek extradition ~~or transfer~~ after being informed of the location
11 of the defendant, the court shall vacate the forfeiture and exonerate
12 the bond on terms that are just and do not exceed the terms imposed
13 in similar situations with respect to other forms of pretrial release.
14 ~~If the prosecuting agency elects to extradite the defendant, the~~
15 ~~court shall toll the 180-day time period for the time required by~~
16 ~~the prosecuting agency to obtain an extradition warrant for the~~
17 ~~defendant plus a reasonable time for the service of the warrant.~~

18 (g) (1) In all cases of forfeiture where a defendant is not in
19 custody and is beyond the jurisdiction of the state, *but in the United*
20 *States or in a foreign state that has a treaty of extradition with the*
21 *United States*, is temporarily detained, by the bail agent, in the
22 presence of a local law enforcement officer of the jurisdiction in
23 which the defendant is located, and is positively identified by that
24 law enforcement officer as the wanted defendant in an affidavit
25 signed under penalty of perjury, and the prosecuting agency elects
26 not to seek extradition after being informed of the location of the
27 defendant, the court shall vacate the forfeiture and exonerate the
28 bond on terms that are just and do not exceed the terms imposed
29 in similar situations with respect to other forms of pretrial release.
30 ~~If the prosecuting agency elects to extradite the defendant, the~~
31 ~~court shall toll the 180-day time period for the time required by~~
32 ~~the prosecuting agency to obtain an extradition warrant for the~~
33 ~~defendant plus a reasonable time for the service of the warrant. If~~
34 ~~the defendant is in a foreign state, the affidavit of the local law~~
35 ~~enforcement officer shall comply with Section 1454 of the Evidence~~
36 ~~Code, or, if the affidavit is a copy, Section 1530 of the Evidence~~
37 ~~Code.~~

38 (2) *In any motion filed under this subdivision, proof shall be*
39 *presented showing the local law enforcement officer's full name,*
40 *title, agency name, contact telephone number, and contact address.*

1 (3) *In any motion filed under this subdivision, proof of positive*
2 *identification shall include proof of the defendant's permanent*
3 *residency in the state or country in which the defendant is detained*
4 *by the bail agent, a legible copy of a government identification,*
5 *including, but not limited to, a driver's license or passport issued*
6 *by an authorized public agency of the state or government of the*
7 *country in which the defendant is detained by the bail agent, with*
8 *the number of the identification written on the affidavit, a current*
9 *photograph, and a complete and clear set of fingerprints.*

10 (4) *If the prosecuting agency does not make an extradition*
11 *decision within the 180-day period provided in this section, the*
12 *bail agency or surety may make a motion to extend the 180-day*
13 *period for an additional period, not to exceed an additional 180*
14 *days. The 180-day extension may be renewed on the same basis*
15 *as the original order. The court may require that the bail agent*
16 *or surety pay the reasonable costs of extradition, in an amount*
17 *not to exceed the value of the bond, as a condition of granting the*
18 *extension.*

19 (h) As used in this section, "arrest" includes a hold placed on
20 the defendant in the underlying case while he or she is in custody
21 on other charges.

22 (i) A motion filed in a timely manner within the 180-day period
23 may be heard within 30 days of the expiration of the 180-day
24 period. The court may extend the 30-day period upon a showing
25 of good cause. The motion may be made by the surety insurer, the
26 bail agent, the surety, or the depositor of money or property, any
27 of whom may appear in person or through an attorney. ~~The court,~~
28 ~~in its discretion, may require that the moving party provide 10~~
29 ~~days prior notice to the applicable prosecuting agency, as a~~
30 ~~condition precedent to granting the motion.~~

31 (j) *In addition to any other notice required by law, the moving*
32 *party shall give the applicable prosecuting agency a written notice*
33 *at least 10 court days before a hearing pursuant to subdivisions*
34 *(f), (g), and (i), and Section 1305.4 as a condition precedent to*
35 *granting the motion.*

36 ~~SEC. 4. Section 1306 of the Penal Code is amended to read:~~

37 ~~1306. (a) When a bond is forfeited and the period of time~~
38 ~~specified in Section 1305 has elapsed without the forfeiture having~~
39 ~~been set aside, the court that has declared the forfeiture, regardless~~
40 ~~of the amount of the bail, shall enter a summary judgment against~~

1 each bondsman named in the bond in the amount for which the
2 bondsman is bound. The judgment shall be the amount of the bond
3 plus costs, and notwithstanding any other law, no penalty
4 assessments shall be levied or added to the judgment.

5 (b) If a court grants relief from bail forfeiture, it shall impose a
6 monetary payment as a condition of relief to compensate the people
7 for the costs of returning a defendant to custody pursuant to Section
8 1305, except for cases where the court determines that in the best
9 interest of justice no costs should be imposed. The amount imposed
10 shall reflect the actual costs of returning the defendant to custody.
11 Failure to act within the required time to make the payment
12 imposed pursuant to this subdivision shall not be the basis for a
13 summary judgment against any or all of the underlying amount of
14 the bail. A summary judgment entered for failure to make the
15 payment imposed under this subdivision is subject to the provisions
16 of Section 1308, and shall apply only to the amount of the costs
17 owing at the time the summary judgment is entered, plus
18 administrative costs and interests.

19 (c) If, because of the failure of a court to promptly perform the
20 duties enjoined upon it pursuant to this section, summary judgment
21 is not entered within 90 days after the date upon which it may first
22 be entered, the right to do so expires and the bail is exonerated.

23 (d) A dismissal of the complaint, indictment, or information
24 after the default of the defendant shall not release or affect the
25 obligation of the bail bond or undertaking.

26 (e) The district attorney, county counsel, or applicable
27 prosecuting agency shall:

28 (1) Demand immediate payment of the judgment within 30 days
29 after the summary judgment becomes final.

30 (2) If the judgment remains unpaid for a period of 20 days after
31 demand has been made, shall forthwith enforce the judgment in
32 the manner provided for enforcement of money judgments
33 generally. If the judgment is appealed by the surety or bondsman,
34 the undertaking required to be given in these cases shall be
35 provided by a surety other than the one filing the appeal. The
36 undertaking shall comply with the enforcement requirements of
37 Section 917.1 of the Code of Civil Procedure.

38 (3) If a motion to vacate forfeiture or judgment is made, be
39 authorized to enter into a court-approved resolution of the judgment
40 or forfeiture.

1 (f) ~~The right to enforce a summary judgment entered against a~~
2 ~~bondsman pursuant to this section shall expire two years after the~~
3 ~~entry of the judgment.~~

4 ~~SEC. 5. If the Commission on State Mandates determines that~~
5 ~~this act contains costs mandated by the state, reimbursement to~~
6 ~~local agencies and school districts for those costs shall be made~~
7 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
8 ~~4 of Title 2 of the Government Code.~~